

**STATE OF MICHIGAN**  
**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**  
**OFFICE OF FINANCIAL AND INSURANCE REGULATION**  
**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXXX**

**Petitioner**

**v**

**File No. 124131-001**

**Priority Health Insurance Company**

**Respondent**

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**Issued and entered**  
**this 12<sup>th</sup> day of December 2011**  
**by R. Kevin Clinton**  
**Commissioner**

**ORDER**

**I. PROCEDURAL BACKGROUND**

On October 25, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Petitioner receives health benefits under a Priority Health Insurance Company (Priority Health) policy. The Commissioner notified Priority Health of the external review and requested the information used in making its adverse determination. Priority Health furnished the requested information on October 26, 2011. On November 1, 2011, after a preliminary review of the material received, the Commissioner accepted the Petitioner's request for external review.

The issue here can be decided by applying the terms of the policy. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

**II. FACTUAL BACKGROUND**

On August 3, 2011, the Petitioner underwent surgery on her right shoulder and hand. The Petitioner was required by Priority Health to undergo 13 visits of physical therapy which she contends was useless prior to having an MRI and surgery. Following surgery, her physician recommended additional physical therapy to regain full mobility in her shoulder and she

exhausted her remaining 17 physical therapy visits for the 2011 calendar year. Her physician requested an exception from Priority Health for coverage of additional physical therapy services to facilitate motion and strengthening beyond the maximum allowed under the policy.

Priority Health denied coverage of the additional physical therapy services citing a 30 visit annual maximum in the Petitioner's policy. The Petitioner appealed Priority Health's denial through Priority Health's internal grievance process. Priority Health issued its final adverse determination on October 13, 2011, upholding its original determination.

### **III. ISSUE**

Was Priority Health correct when it denied coverage of additional physical therapy services beyond the maximum allowed per calendar year?

### **IV. ANALYSIS**

#### **Petitioner's Argument**

In her request for external review, Petitioner wrote:

I had a surgical rotator cuff repair, a SLAP repair and a carpal tunnel release performed on August 3, 2011. Prior to the surgery, I under[went] a course of physical therapy (I was told by my primary care physician was required by Priority Health) to try to heal my shoulder. After 6 weeks, the physical therapist said that there must be a tear and a tear could not be fixed with physical therapy. I was then diagnosed with a possible rotator cuff tear and some other possible damage that needed surgical repair. During surgery it was discovered that I had another serious tear called a SLAP tear. The SLAP tear requires more extensive rehabilitation as the affected muscle cannot be used until the repair [is] fully healed. This can take 4-6 months.

I am 11 weeks post surgery and still must undergo, by doctor prescription, physical therapy 2-3 times per week for another 5 weeks with "Assisted Range of Motion", meaning the therapist has to actually move my arm to keep range of motion in my shoulder. Should I go without this therapy, there is a high chance that my shoulder will freeze, requiring a surgical release or re-injury to the surgical site. At the very least, my recovery will be prolonged another 3-4 months affecting my quality of life and my health. You see, I am right handed and my right shoulder [is] at issue. I am, at this point, unable to move my upper arm more than a few inches from my body. I still require assistance performing simple daily functions. More importantly I am unable to exercise as before and this

dramatically affecting my health. My neck, back and left shoulder are being affected by the added use and I have begun to have added pain in those areas as well.

After this week, I cannot afford to pay for physical therapy more than once every two weeks. I had one session last week and one this week and I am already suffering from decreased mobility and I have started experiencing some neurological issues in my lower arm and hand.

Priority Health approved the surgery, but are not willing to allow the physical therapy needed to recuperate from the surgery. I have followed my surgeons post surgical orders to the letter until I ran out of physical therapy sessions. I feel that Priority Health is preventing me from following Dr's orders. I have asked to "borrow" benefits from next year but was turned down.

I am desperate to regain the use of my arm. I care for my 24 year-old brain injured son and it's difficult to say the least. . . .

In a letter dated September 22, 2011, Petitioner's orthopedic surgeon wrote:

[The Petitioner] had her rotator cuff repaired, just over six weeks ago. She tells me she only has four visits to therapy left.

I think to stop therapy at this time would be detrimental to her future outcome in regard to the shoulder. She certainly needs to continue with the therapist, working with her motion and strengthening.

I would ask that you extend her coverage for therapy in regard to the right arm. . . .

### Respondent's Argument

In its final adverse determination dated October 13, 2011, Priority Health wrote:

#### Decision:

Uphold denial – requested coverage will not be provided.

Visits in excess of the benefit maximum are not a covered benefit as outlined in the Insurance Policy and Schedule of Benefits . . .

While the Appeal Committee understands the medical need for [the Petitioner] to continue receiving therapy, visits in excess of the benefit maximum are not a covered benefit as outlined in the Insurance Policy, Schedule of Benefits and Priority Health Medical Policy No. 91318-R8 for Rehabilitative Medicine Services. Unfortunately, Priority Health does not allow for exceptions to this benefit limit, regardless of medical need.

Commissioner's Review

The Petitioner's policy and schedule of benefits clearly indicate that the benefit for physical therapy is limited to 30 visits per contract year and that this benefit maximum applies even when continued care is considered medically necessary beyond the benefit maximum. The policy includes the following provisions:

**SECTION 6. Covered And Non-Covered Services**

\* \* \*

Rehabilitative Medicine Services

\* \* \*

The rehabilitative medicine benefits are categorized in the Schedule of Copayments and Deductibles. The maximum number of visits per Contract Year for each rehabilitative medicine category is shown in the Schedule of Copayments and Deductibles. The visit maximums apply even when continued care is Medically/Clinically Necessary beyond the benefit maximum. . . .

[Page 19]

**SECTION 7. Limitations**

\* \* \*

A. Benefit Maximums.

Some of the Covered Services described in this Policy are subject to benefit maximum. The benefit maximums may differ for the Preferred and Alternated Benefits levels. The Schedule of Copayments and Deductibles and any riders to this Policy lists those maximums.

\* \* \*

Once you reach a maximum for a Covered Service, you will be responsible for the cost of additional services received during the Contract Year even when continued care is Medically/Clinically Necessary beyond the benefit maximum.

[Page 59]

While the Commissioner is sympathetic to the Petitioner's need for continued physical therapy services and her expressed inability to pay for additional physical therapy services, those additional visits simply are not covered under the policy.

Priority Health's denial of coverage for the additional physical therapy sessions is consistent with the terms of the Petitioner's policy.

**V. ORDER**

The Commissioner upholds Priority Health Insurance Company's final adverse determination issued October 13, 2011. Priority Health is not required to provide coverage for physical therapy services beyond the maximum of the 30 visits allowed per calendar year under the policy.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton  
Commissioner